

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 270 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PANKAJ ALIAS PANKHO NARSINH- BHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 270 of 2005
MS BANNA S DUTTA for Petitioner No. 1
MR IM PANDYA, APP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/04/2005

ORAL JUDGEMENT

1. By way of filing this Special Criminal Application, the present petitioner has challenged the order passed by the Deputy Police Commissioner, Eastern Zone, Surat City, Surat, on 8th September, 2004 externing

the petitioner from the city of Surat for two years and from contiguous districts of Surat city for one year, in exercise of powers conferred upon him vide Section 56(a) and (b) of the Bombay Police Act, 1951. The present petitioner preferred statutory appeal under Section 60 of the Bombay Police Act, 1951, but the same was also rejected vide order of Appellate Authority on 22nd February, 2005. The petitioner has challenged the order of Appellate Authority, as well.

2. The facts revealed that a show-cause notice came to be issued against the petitioner on 23rd April, 2004 in exercise of powers under Section 59 of the Bombay Police Act, 1951 by the Deputy Police Commissioner, Surat. It was alleged that why the petitioner should not be removed from the city of Surat and adjoining districts under Section 56(a) and (b) of the Bombay Police Act, 1951. The externing Authority alleged that four crimes were registered against the petitioner. The first crime came to be registered under Section 135 of the Bombay Police Act, on 5th May, 2003, the second crime came to be registered under Section 12-A of the Prevention of Gambling Act, third crime came to be registered under Section 135 of the Bombay Police Act, 1951 on 14th July, 2003 and fourth crime came to be registered under Sections 504 and 506(2) of the Indian Penal Code, on 4th December, 2003. The externing authority also relied upon some incamera statements whereby bullying tactics and behaviour of the petitioner was disclosed. The externing authority, therefore, came to the conclusion that the petitioner was headstrong, ferocious and pugnacious temperament and on account of the fear of the petitioner nobody dared to file any complaint against him. The detaining authority, therefore, issued the above said notice. The notice was served upon the petitioner on 15th June, 2004 and he tendered his reply. After hearing both the sides, the externing authority came to the conclusion that the petitioner was indulged in criminal activities from December, 2003 to January, 2004 in the area of Varachha Kubernagar of Surat and the petitioner was required to be removed from the city of the Surat and adjoining districts. The externing authority relied upon four above mentioned cases filed against the petitioner and incamera statements of the witnesses. The above said order passed on 8th September, 2004 by the externing authority removing the petitioner from the city of Surat and adjoining districts and the order passed by the Appellate Authority on 22nd February, 2005 rejecting the appeal of the petitioner against the order of the externing authority, both are challenged in this petition.

3. Learned advocate Ms.J.C.Bhatt for the petitioner and learned APP Mr.I.M.Pandya for the respondents were heard at length.

4. Out of various grounds urged on behalf of the petitioner as opposed and controverted by the learned APP, it appears that this Special Criminal Application can be examined and disposed of, on the sole issue as to whether the orders suffer non-application of mind on the part of externing authority towards the relevant material, taken into consideration by him.

5. It is, undoubtedly, a settled law that once the non-application of mind by the externing authority is disclosed towards one aspect of the matter, the whole order passed by the externing authority would be liable to be held vitiated. The concerned authority is empowered to take action under, either of the two clauses of Section 56 of the Bombay Police Act, 1951 or under two clauses together. Under Section 56(a) the action can be taken, when the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or to property and action under Section 56(b) can be taken, when there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code or in the abetment of any such offence. It is clear that the ground for action to be taken under Clause (a) and (b) of Section 56 of the Bombay Police Act, 1951, are separate.

6. While going through the notice as well as the order of externing authority, it clearly appears that the externing authority has taken into consideration the offence committed against the petitioner under Chapter XII, XVI and XVII of the Indian Penal Code. After framing heading in show-cause notice under Section 59 as well as final order passed by externing authority on 8th September, 2004 under the heading of offence under Chapter XVI and XVII of the Indian Penal Code, undoubtedly, the externing authority has taken into three cases out of four, which are not falling within Chapter XVI and XVII of the Indian Penal Code. The first offence is registered under Section 135 of the Bombay Police Act, 1951, second offence is registered under Prevention of Gambling Act and third offence is registered under Section 135 of the Bombay Police Act, 1951. This may be the material for action to be taken under Section 56(a) of the Bombay Police Act, 1951 but undoubtedly, this

material is used by the externing authority for taking action under Section 56(b). This is apparent from the framing of such heading in the notice and final order. Therefore, when there is non-application of mind of externing authority towards one aspect of the matter, the whole order would be vitiated on account of non-application of mind by the externing authority. The orders under challenge, therefore, are required to be quashed and set aside on this ground alone that there is total non-application of mind towards the relevant material by the externing authority in arriving at the conclusion.

7. In the result, the Special Criminal Application is allowed. The impugned externment order passed by the Deputy Police Commissioner, Eastern Zone, Surat City, Surat on 8th September, 2004 and the order passed by the Appellate Authority on 22nd February, 2005 both are hereby quashed and set aside. Rule is made absolute. Direct service is permitted.

[J. R. VORA, J.]

(vijay)